IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Bail Appl..No. 7852 of 2007()

CRIME 420/07 OF SAKTHIKULANGARA POLICE STATION

PETITIONER : ACCUSED 1 AND 2:

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1. KOCHUKUTTAN, S/O.THANKAPPAN,
   MALLASSERY VADAKKETHIL, KANNIMEL CHERRY,
   KAVANADU P.O., SAKTHIKULANGARA, KOLLAM.

2. VALIYA KUTTAN, S/O.THANKAPPAN,
   -DO-, -DO-.

BY ADV. SRI.DILEEP P.PILLAI

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7852 OF 2007

Dated this the 19th day of December, 2007

O R D E R

Application for anticipatory bail. Petitioners are accused Nos.1 and 2 in a crime registered under Section 326 IPC. Altogether there are six accused persons. Five accused persons including the petitioners are named in the FIR. The crux of the allegations is that because of the animosity entertained by the 2nd accused on account of the fact that the de facto complainant invited only a friend of A2 and not A2 for a drinking party which the de facto complainant hosted, the accused persons allegedly attacked the victim with dangerous weapons including 'idikkatta'. The de facto complainant suffered grievous hurt – loss of tooth. The alleged incident took place on 25.11.07. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. They may now be granted

anticipatory bail subject to any appropriate terms and conditions, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. There are no features whatsoever justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C., submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer

or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

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